

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0031P**  
**Adjusted Gross Income Tax**  
**Calendar Year 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration—Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalties assessed for the late payment of adjusted gross income taxes for calendar year 1997.

Taxpayer filed its original return on October 15, 1998 with a check for the balance due of \$15,213.00. Taxpayer was assessed a penalty for failing to pay ninety percent (90%) of the tax by the due date.

On January 4, 2000 the taxpayer protested liability number 97-0559652 for penalty.

**I. Tax Administration—Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed based upon the fact that at the time of the original due date, it had calculated the expected tax liability based upon the best available information at that time and had made tax payments to satisfy the expected liability. Taxpayer further states that since it requests an extension for the federal income tax return and some federal adjustments are made subsequent to the federal and state extension requests, its state income tax calculation at extension may need to be adjusted as in this case.

IC 6-3-4-4 (c) states:

Every corporation subject to the adjusted gross income tax liability imposed by IC 6-3 shall be required to report and pay quarterly an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year, less the credit allowed by IC 6-3-3-2 for the tax imposed on gross income. Such quarterly estimated payment shall be made at the same time and in conjunction with the reporting of gross income tax as provided for in IC 6-2.1-5. The department shall prescribe the manner and forms for such reporting and payment.

IC 6-3-4-4 (d) states:

The penalty prescribed by IC 6-8.1-10-2(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any quarterly payment which equals or exceeds twenty percent (20%) of the final tax liability for such taxable year, or as to any quarterly payment which shall equal or exceed twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year. In addition, the penalty as to any underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the corporation on such quarterly return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

The department did not assess a penalty based upon the above listed code citations. The penalty was assessed because of taxpayer's failure to pay ninety percent (90%) of the tax due by the due date as required by IC 6-8.1-6-1.

IC 6-8.1-6-1 clearly states that at least ninety percent (90%) of the tax that is reasonably expected to be due must be paid on or before the due date or penalties may be imposed for failure to pay the tax.

### **FINDING**

Taxpayer's protest is denied.